Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS
OF THE
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

Respectfully submitted,

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SUMMARY

The National Association of Business and Educational Radio, Inc. ("NABER") respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM") issued by the Federal Communications Commission in the above-captioned proceeding.

NABER recommends that to the extent that new rules and limitations are placed on Part 90 licensees, such rules and limitations be delayed until the end of the transition period. Education of the new rules will be paramount for all Part 90 licensees, and the Commission's proposals in this and other proceedings will fundamentally change the vast majority of the Commission's Part 90 rules, where there are currently more than one million licenses. Such rules and limitations should not be phased in over time, as this will only create further confusion.

NABER urges the Commission to elect the least restrictive rules necessary. Rules should only ensure a level playing field among applicants and prevent interference between systems. Where current rules do not accomplish this goal, NABER recommends that the Commission eliminate such unnecessary restrictions.

NABER has reviewed a draft of an 800 MHz SMR service-area licensing proposal by Nextel, and NABER generally supports the concept. Herein, NABER provides of its view of the manner in which service-area based licensing can occur. NABER endorses the Commission's proposed concept for 900 MHz licensees and suggests

that perhaps MTAs most satisfy the needs of SMR service providers to serve business customers with dispatch needs.

For Part 22 paging systems, NABER recommends several changes which would improve speed of service for license grants for the band. Additionally, NABER requests that it be designated as the Commission's frequency advisory committee for the Part 22 paging channels. NABER believes that it can bring the same benefits to licensees in the Part 22 services as it has to the 929 MHz PCP licenses.

NABER opposes the Commission's spectrum cap. Although NABER supports a limit on the amount of spectrum assigned to a single entity in an allocation of new spectrum, NABER believes that a spectrum cap in a mature market thwarts the marketplace forces which have led to a competitive wireless communications infrastructure.

To the maximum extent possible, NABER supports the continued use of first-come, first-serve procedures for Part 90 applications. NABER recommends that the Commission permit mutually exclusive applications within thirty (30) days for the 861/865 service-area based licensing band, while retaining first-come, first-serve procedures for 851/860 MHz applications.

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NATIONAL ASSOCIATION OF BUSINESS
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The National Association of Business and Educational Radio, Inc. ("NABER") by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, respectfully submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM") issued by the Federal Communications Commission on May 20, 1994, in the above-captioned proceeding.[1]

I. BACKGROUND

A. The National Association of Business and Educational Radio, Inc.

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has six membership sections

[1] 59 FR 28043 (May 31, 1994).

representing Users, Private Carrier Paging licensees ("APCP"), radio system integrators, Technicians, Specialized Mobile Radio operators and Tower Site Owners and Managers. NABER's membership comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

B. **NABER As A Frequency Coordinator**

For the past 19 years, NABER has been the recognized frequency coordinator in the 450-470 MHz and 470-512 MHz bands for the Business Radio Service. NABER is also the Commission's recognized frequency coordinator for the 800 MHz and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR Systems, and for the 929 MHz paging frequencies.

In its Report and Order in PR Docket No. 83-737, the Commission designated NABER as the frequency coordinator for all Business Radio Service frequencies below 450 MHz and, in a joint effort with the International Municipal Signal Association ("IMSA") and the International Association of Fire Chiefs ("IAFC"), the Special Emergency Radio Service frequencies.

C. **The Commission's FNPRM**

In this proceeding, the Commission seeks comments on proposals to "equalize" the rule treatment of certain services currently regulated under Parts 90 or 22. While the FNPRM does not propose a merger of the rules into a single portion of the rules at this time, it does propose to create "like" rules where necessary or appropriate.

The FNPRM is technically complex, and asks many far-reaching questions which will fundamentally change the way in which many services are licensed. Although the FNPRM proposes to change the rules only for services reclassified as Commercial Mobile Radio Service Providers ("CMRS"), the changes will also greatly impact non-CMRS licensees. Therefore, the proposed rules will have an impact which exceeds its intended targets.

The Commission believes that these changes are necessary where certain Part 90 and Part 22 services are "comparable", or "substantially similar". For example, the Commission asks if a small Part 90 SMR System is substantially similar to a Part 22 IMTS system. If such systems are substantially similar, the Commission asks whether it must make rule changes to ensure that one service does not receive more favorable regulatory treatment than another, comparable service.

Although the Commission has a statutory deadline of August 10, 1994 to make the necessary rule changes, not all of the changes proposed in this proceeding must be made by the August 10 deadline. Since the issues involved are extremely complex, NABER recommends that the Commission decide now only those issues which must be decided now. Complex licensing issues which can be resolved in a continuation of this proceeding should wait for a complete analysis, instead of a rush decision that results in numerous petitions for reconsideration. Further, NABER recommends that to the extent that new rules and limitations are placed on Part 90 licensees, such rules and limitations be delayed until the end of

the transition period. Education of the new rules will be paramount for all Part 90 licensees, and the Commission's proposals in this proceeding, MD Docket No. 94-19 (Regulatory Fees) and PR Docket No. 92-235 (Part 90 Refarming) fundamentally change the vast majority of the Commission's Part 90 rules, where there are currently more than one million licenses. Such rules and limitations should not be phased in over time, as this will only create further confusion. Therefore, NABER recommends two rule change periods, one on August 10 and one at the end of the transition period in 1996.

Although there has been little time to develop cogent comments on the numerous complex issues in this docket, NABER presents herein its initial views on virtually all of the subjects addressed by the Commission in the FNPRM. NABER cautions that some of its views may evolve as this proceeding progresses and additional analysis can be performed.

II. COMMENTS

A. "Substantially Similar" Services And Licensing History

Although the FNPRM asks questions as to whether certain services are "comparable", NABER believes that, in the context of this proceeding, the designation as "comparable" is not as important as the impact of the licensing and operational rules ultimately adopted by the Commission in this proceeding.

For example, the Commission may find that Part 22 paging services below 800 MHz are "substantially similar" to Part 90 paging services below 800 MHz. However, in crafting rules to

ensure that one service is not disadvantaged, the Commission must take into account that Part 90 paging frequencies below 800 MHz are not assigned on an exclusive basis and are heavily shared among many licensees. As a result, it may not be practical or feasible to adopt the same licensing and operational requirements for each type of system. In sum, the Commission must be sensitive to the licensing and operational history of each service and frequency band which it reviews, in order to ensure that competitive services can in reality compete.

In addition, the FNPRM makes no mention of the frequency coordination services which have provided a tremendous service for the industry and the Commission, enabling the rapid licensing of private carrier paging and SMR Systems. Any rules drafted in this proceeding must take into account this licensing history and, as explained further below, expand upon this role where possible. Further, the Commission must closely review the impact of the new rules on non-CMRS Part 90 licensees, which are eligible for the same frequencies as SMR, private carrier paging and two-way private carrier systems. Thus, NABER requests that the Commission expand its proposed "test" in evaluating rule changes to include an analysis of the impact on non-CMRS Part 90 licensees and the impact of a proposed rule change **within that service's own licensing sphere.**

Against this background, NABER urges the Commission to elect the least restrictive rules necessary. Rules should only ensure a level playing field among applicants and prevent interference

between systems. Where current rules do not accomplish this goal, NABER recommends that the Commission eliminate such unnecessary restrictions.

1. Specialized Mobile Radio

The Commission asks whether the SMR Service is "substantially similar" to any Part 22 mobile service.[2] The Commission recognizes that the apparent similarity between wide-area multi-channel SMR systems and the cellular service prompted the Congressional modification of Section 332 of the Communications Act. Therefore, the Commission suggests that the two services could be viewed as substantially similar.

Although wide-area multi-channel SMR systems may at some time in the future achieve substantial similarity with cellular systems, the reality is that the systems will not be similar enough in the near future to warrant a substantial change in the manner in which SMR systems are regulated. In this regard, the limited amount of spectrum available to an SMR system and the intense geographic sharing of spectrum in the band will preclude an apples-to-apples comparison with cellular systems. Although some wide-area SMR Systems have been able to assemble spectrum over a wider geographic area than a typical cellular system, the lack of available spectrum still limits the SMR Service.

For purposes of this proceeding, however, the designation of "substantially similar" may not be significant, provided the

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[2] FNPRM at par. 15.

Commission recognizes the licensing and operational history of the service.

For example, the Commission asks in paragraph 50 of the FNPRM whether the height and power limitation imposed on cellular systems should also be imposed on wide-area SMR Systems. NABER opposes this proposal, as a wide-area SMR system may be limited in the number of frequencies available at a particular geographic area, due to co-channelling by unaffiliated systems. In such an area, the wide-area SMR licensee may not have enough spectrum to be able to use cellular type transmitter sites, and may instead need to utilize a "macro" site. A cellular system would not be faced with this type of limitation. Thus, imposition of an arbitrary power and height limitation would limit the operator's ability to compete. Therefore, Commission recognition of the licensing and operational history of the service leads to the conclusion that "equalizing" the height and power limitations between the two services is neither necessary nor practical.

In paragraph 16 of the FNPRM, the Commission recognizes that any apparent similarities between cellular systems and wide-area SMRs do not apply to the traditional SMR system. Such systems may provide some measure of interconnection, however the interconnection is typically only half-duplex (push to talk) because of limited capacity. In other respects, the traditional SMR system differs in other ways from cellular systems. The small number of channels (compared to cellular), limited geographic area

in which the channels are used and multiple service providers mandate a different regulatory policy than cellular.

Throughout the FNPRM the Commission discusses 800 MHz SMR Systems with little or no distinction between trunked SMR Systems and conventional SMR Systems. Conventional SMR Systems operate in a far different operational environment that trunked systems. Conventional SMR Systems do not necessarily have exclusive use of a channel. Further, the channel may not only be shared with other SMR Systems, but also with non-SMR licensees. In crafting regulatory policy, the Commission must be aware of this difference and ensure that rules crafted for the band do not adversely impact the conventional systems or the non-SMR licensees that are also eligible for the same channels.

2. 220-222 MHz Service

The 220-222 MHz Service is in most respects similar to traditional SMR. This is true even for the nationwide allocations, which the Commission theorizes may be substantially similar to narrowband PCS. The limited amount of channels allocated for the service and the inability to combine some of the channels into larger systems (because of adjacent channel interference on some channels), means that the service will be primarily dispatch and data, with only limited interconnection, if any is offered at all. For the nationwide licenses, the allocation of five channels 5 kHz wide prevents competition or comparison to narrowband PCS. Any need for regulatory symmetry should be confined to comparing the

220-222 MHz Radio Service to traditional SMR, instead of seeking an artificial comparison to a Part 22 service.

3. Business Radio Service

It is NABER's opinion that the two-way private carrier operations which operate on channels below 800 MHz and are interconnected offer such limited capacity on channels shared with other eligibles. Threfore, the Commission should refrain from attempting to find similar systems and should not adopt regulatory changes which would disrupt the Commission's ongoing refarming proceeding. The Commission's proposal in the Refarming Docket to discontinue licensing of two-way private carriers systems on channels below 470 MHz means that such systems will have little ability to expand and be competitive with any Part 22 service.

4. Paging Service

Part 22 paging systems and Part 90 paging systems operating on exclusive channels present the most similar operational and technical limitations of any systems compared in this proceeding. Thus, it would be fair to equalize the treatment between the services as much as possible. However, as explained more completely infra, although the two services are substantially similar, they should not have **identical** licensing procedures because of the history and development of the service. In this case, separate but equal will create a fair and equitable licensing procedure for all licensees.

Part 90 paging systems operating below 929 MHz, however, present a far different situation. Such systems operate on

frequencies which are heavily shared. As a result, manufacturers have been required to create new equipment and operators have entered into agreements in order to permit multiple paging systems to equitably share channels. Thus, such systems are not as readily comparable to Part 22 paging systems at this time. Because each PCP system operating on a shared channel ultimately is able to utilize only a portion of the available airtime, the Commission should maintain the special rules mandating channel sharing which have been developed by the Commission and NABER over the years.

B. Technical Rules

1. Channel Assignment and Service Area

In PR Docket No. 93-144,[3] the Commission proposed to issue SMR Pool licenses on a service-area basis instead of the traditional, transmitter-based license. However, the Commission recognizes that the high volume of applications it received during 1993 and 1994 have resulted in the licensing of virtually all 800 MHz SMR Pool channels across the country.[4] Therefore, the Commission asks whether a wide-area type licensing approach is still feasible.

The Commission's initial proposal is to retain the existing channel assignment rules for traditional SMR Systems and create a wide-area, multi-channel SMR assignment mechanism, using MTAs. As an alternative, the Commission would permit 800 MHz licensees to

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[3] Notice of Proposed Rule Making, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993).

[4] See, NABER's Petition for Rule Making, filed March 6, 1992; NABER's Comments in RM-8387, filed December 9, 1993.

operate in a self-defined service area, with an extended implementation plan.

The FNPRM assumes that the SMR service providers can be neatly divided into (1) wide-area multi-channel SMR providers that seek to compete with cellular and (2) small, local SMR providers that seek to deliver traditional dispatch services to business customers. This over-simplification leads to several proposals to establish technical rules for the wide-area systems similar to cellular Part 22 rules and rules for small providers similar to Part 90. This approach ignores the fact that SMR providers do not fall into two simple categories and cannot be easily characterized.

For example, Geotek Communications ("Geotek"), a member of NABER's SMRA Council, is a wide area multi-channel SMR that seeks to provide traditional dispatch to business customers. Geotek intends to use a single high power transmitter rather than cellular-like low power interconnected cells to provide its service, relying on Frequency Hopping Multiple Access FHMA technology to achieve high capacity. Thus, Geotek does not fit either model of the SMR industry. As discussed more completely below, in paragraph 50 of the FNPRM, the FCC proposes to regulate height and power restrictions for wide area SMRs as they do for cellular. If this technical rule is applied to Geotek proposed service, it may effectively eliminate the ability of Geotek to deploy FHMA technology, because Geotek employs high power cells.

An additional problem in using service-area based licenses in the SMR Service is the fact that each license issued by the

Commission is for multiple channels. In the current SMR environment, a typical SMR licensee has different co-channel licensees on each frequency. Therefore, it is difficult to issue a service-area based license where the co-channeling environment is different on each channel on the license. Further, because there are so many co-channel systems at a variety of locations, each co-channel licensee needs to know the exact transmitter location of each co-channel system in order to know where the system can be relocated to when a site lease expires, etc. As a result, even if a service-area based license is issued in the current SMR environment, the licensee must still inform the Commission (or coordinator) of the exact transmitter location(s) in order to prevent interference. Thus, the benefits gained by a service-area based license is lost in the current SMR environment.

The FCC should recognize in its rules that SMRs come in many forms and the Commission should build as much technical flexibility into the rules as possible. In the case of height and power requirements the FCC should adopt its proposal to limit station power at the licensees service area border, but give licensees flexibility within the interior portion of its service territory.

Any wide-area licensing mechanism adopted by the Commission must recognize that a large portion of the traditional analog and wide-area licenses currently issued by the Commission include numerous frequencies in the General Category, Industrial/Land Transportation and Business Radio Pools. It is therefore difficult to create service-area based licenses for systems which include a

variety of types of channels. Further, existing wide-area and analog licensees should not be disadvantaged by any modifications that the Commission ultimately adopts which changes the manner in which licensing is accomplished. Finally, the Commission must be acutely aware of the fact that frequency coordination for the non-SMR Pools has resulted in speed-of-service production by the Commission's Gettysburg Licensing Division of approximately ninety (90) days, while speed-of-service for SMR Pool channels approaches ten (10) months and is growing.[5]

Against this background, NABER's SMRA Council has met with other SMR operators in order to attempt to develop a service-area based licensing approach which would accomplish several goals. The goals are:

> (1) Applicants desiring service-area based licenses could obtain such licenses;
>
> (2) Small SMRs could continue to operate and have access to spectrum for growth where available;
>
> (3) The Commission is able to process applications more rapidly;
>
> (4) Current wide-area licensees can continue with their system build-outs and be able to expand;
>
> (5) Existing licensees of analog systems would be able to convert to wide-area licenses without disadvantage;

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[5]In the past six months, approximately 92% of the applications received by NABER contain errors. This represents a tremendous leap from the error rate during the past two years in the private services. By correcting such errors, NABER eliminates another burden on the Commission, as the Commission no longer has to return or correct such applications.

(6) Business and Industrial licensees are not surrounded by service-area based licenses, negating their ability to modify, grow or expand;

(7) All Part 90 licensing is not held waiting on mutually exclusive applications to be resolved;

(8) Applications for non-CMRS applicants are not unnecessarily delayed and non-CMRS applicants are able to obtain Part 90 spectrum on an equal basis with CMRS licensees; and

(9) The licensing procedures are consistent in purpose with other CMRS procedures.

With the above considerations in mind, NABER offers the following suggestions for the various services:

(a). **800 MHz SMR**

NABER has reviewed a draft of a service-area licensing proposal by Nextel, and NABER generally supports the concept. Therefore, NABER provides the following details of its view of the manner in which service-area based licensing can occur.

NABER proposes that the Commission permit service-area based licensing for only the 861/865 MHz portion of the SMR Pool. The license would be for a Commission defined service area (i.e. BTA/MTA). If an applicant wanted a service area license, the applicant would be required to move all non-affiliated licensees in the service area on the requested frequencies to the 856/860 MHz portion of the SMR Pool at the wide-area applicant's cost. The wide-area licensee would give up some of its 856/860 MHz spectrum to accommodate the relocated licensee. All new licensing by the Commission would be service-area based in the 861/865 MHz band, and transmitter based for the rest of the 800 MHz band.

861/865 MHz licensees would not be required to move, and would be grandfathered for their existing authorizations. Modifications would be limited by the MTA/BTA boundaries of surrounding service-area based licensees. However, there would be incentive for a transmitter based licensee to move. Specifically, such a transmitter licensee is most likely surrounded by an ESMR licensee at very short co-channel spacings which were obtained under the Commission's former "short-spacing" rules.[6] By moving this licensee to a 856/860 MHz frequency which is surrendered by the ESMR, the licensee would no longer be a high-powered "island" surrounded by low-power stations. This cumulative interference problem was initially raised by NABER in the Fleet Call proceeding. All further short-spacing on the 856/860 MHz spectrum would be under the Commission's new short-spacing table, which would give the licensee much more protection and flexibility. Further, the "changeout" would help minimize adjacent channel interference which has been discussed as a potential problem with digital equipment.

It is important that the Commission permit new service-area based licensees in the 861/865 MHz band to the extent that spectrum remains available. This would give the opportunity for existing transmitter based licensees which do not currently have wide-area licenses to combine with other licensees on the same frequencies

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[6]Originally, the Commission permitted "short-spacing" in the 800/900 MHz band based upon a demonstration of no overlap of the 40 dBμ service area and 30 dBμ interference area contours of the systems. This waiver evolved into a 40/22 dBμ overlap showing, encompassed in 47 C.F.R. 90.621(b)(4). This rule was subsequently amended to provide additional protection for existing systems, based upon extensive comments from the private radio industry.

to create wide-area systems. NABER would oppose a limit on the maximum or minimum number of channels for which a service-area based licensee could obtain a license. Rather, the marketplace should dictate whether it is feasible for existing licensees to reach agreements with each other to create wide-area systems.

NABER opposes making the move from 861/865 MHz to 856/860 MHz mandatory. Such a requirement would only result in preventing existing licensees from combining and converting to wide-area operation. Further, in many large urban areas, there may not be sufficient spectrum for all transmitter site 861/865 MHz licensees to be relocated to 865/860 MHz.[7] In addition, where there are three licensees on a particular frequency, two of which have been granted wide-area licenses, mandatory movement would also cause needless mutual exclusivity situations. NABER emphasizes that the Commission should let the marketplace determine whether a service-area based license can be issued by giving applicants incentives to cooperate with other licensees.

However, there may be situations where a transmitter based licensee refuses to agree to a move from 861/865 MHz frequencies to 856/860 MHz frequencies, despite the presence of sufficient spectrum and the sincere efforts of a wide-area licensee(s) in the area. Although NABER expects this situation to be rare, and may never occur, when the transmitter based licensee files for renewal, a wide-area licensee may file a competing application. In most

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[7]There are 200 SMR Pools channels from 861/865 MHz, but only 80 SMR Pool channels from 856/860 MHz. Further, there are even fewer SMR Pool channels in the Canadian and Mexican border regions.

cases, as discussed below, the existing licensee would have a substantial renewal expectancy.[8] In this case, however, it may be appropriate to afford the existing licensee a lower level of renewal expectancy. If a competing applicant demonstrated to the Commission that the existing licensee had been offered: (1) suitable alternative spectrum; (2) a substantial payment from a wide-area licensee which covered all reasonable expenses for the move; (3) an adequate changeover period; and (4) no negative impact on the provider whatsoever, then the Commission may find that the existing licensee is not entitled to a renewal expectancy and can decline to renew the license.

It is important that the Commission recognize and not disadvantage existing wide-area licensees in the 851/860 MHz band. NABER strongly believes that such licensees should be able to continue with their operations as they currently are licensed. Further, new wide-area licensees in the 851/860 MHz band should continue to be licensed under the current procedures (i.e. footprint based, sufficient mobiles to demonstrate aggregate loading, etc.).

The relocation proposal is similar to what NABER proposed in the Part 90 "Refarming" proceeding.[9] In that proceeding, NABER stated that a licensee should be permitted to buy out or move co-channel licensees in order to achieve exclusivity. The 800 MHz

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[8]See, FNPRM at par. 139.

[9]Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992).

proposal is similar, however in this case what the licensee achieves is a wide-area license.

NABER suggests that the licensing procedures can work as follows:

1. The Commission immediately discontinue accepting applications for transmitter based applicants (other than modifications or wide-area conversion applications) in the 861/865 MHz band. The Commission should thereafter attempt to accommodate all transmitter based applicants in the 856/860 MHz band.

2. A service-area based applicant could file an application for designated frequencies in the 861/865 MHz band with the Commission (either for a BTA or MTA). The applicant would show that unaffiliated co-channel licensees in the service area would be moved to designated frequencies currently licensed to the applicant in the 856/860 MHz band. The service-area based applicant would be required to surrender all of its licenses within seventy (70) miles of the transmitter site of the relocated transmitter based licensee on the frequencies to be surrendered.

3. Existing analog licensees in the 861/865 MHz band would **not** be required to move. Existing licensees who are unable to be accommodated in the 856/860 MHz band would retain their transmitter based licenses and could modify as necessary. The wide-area applicant must pay for the changeover costs to the existing licensee as negotiated between the parties.

4. Relocated analog licensees should not be required to meet any loading deadlines.

5. Applications for the 861/865 MHz band would be placed on Public Notice, with a thirty day period for mutually exclusive applications and Petitions to Deny. Auctions would be held in the event that a competing application is filed.

6. The Commission would issue two new authorizations, one for the 861/865 MHz wide-area system, and one in the 856/860 MHz band for the existing, unaffiliated licensee with the same operational parameters as the original license with different frequencies. A reasonable period of time would be permitted for the unaffiliated licensee to complete the changeover.

7. A licensee with a service-area license would have obligations similar to the cellular service in terms of interference protection to co-channel licensees and filing of applications for modified transmitter sites, etc.

8. Applicants wishing to have wide-area systems (digital or analog) in the 851/860 MHz band could continue to be licensed under the current policies (constructed footprint as service area, transmitter site based license, applications for modifications required, etc.). Licensees of wide-area systems in the 851/860 MHz band should also be permitted to combine capacity with a wide-area license granted to the same entity in the 861/865 MHz band.

9. CMRS Applications in the 851/860 MHz band would be placed on Public Notice and Petitions to Deny could be filed (as required by statute). However, applications would be processed on a first come, first serve basis.

The 851-860 MHz band, for which non-CMRS private systems are eligible, should remain licensed on a first come, first serve basis. Should the Commission permit mutually exclusive applications to be filed against CMRS applications, all non-CMRS applications for the band would need to be held while the Commission selects among mutually exclusive applications. This would have a devastating effect on non-CMRS applicants. In effect, non-CMRS licensees would be subjected to CMRS procedures, which NABER believes is a result which the Commission does not desire.

As discussed above, traditional analog SMR Systems are not comparable to cellular systems. Therefore, it is appropriate for the Commission to adopt a different regulatory structure, where warranted. Adoption of the rules suggested by NABER would ensure that applicants have a variety of options, depending on system preference and frequency availability, with the marketplace governing the choices made by applicants.

9. Finally, NABER recommends that frequency coordination be required for the 856/860 MHz SMR Pool. As discussed above, the Commission is currently inundated with requests for trunked SMR channels, resulting in a speed of service which is rapidly approaching one year. In contrast, the General Category, Business Pool and Industrial/Land Transportation Pool frequencies can be granted immediately by the Commission and are currently being processed within approximately ninety (90) days.

NABER feels strongly that the Commission should continue to require frequency coordination for the General Category, Business